

Act No. 213
Public Acts of 1998
Approved by the Governor
July 1, 1998
Filed with the Secretary of State
July 1, 1998

EFFECTIVE DATE: 91st day after final adjournment of 1998 Regular Session

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Reps. DeHart, Schermesser, Hale, Wojno, Schauer, Wetters, Freeman, Kelly, Cherry, Hanley, Martinez, Kilpatrick, Prusi, Quarles, LaForge, Goschka, Kukuk and Scott

ENROLLED HOUSE BILL No. 4897

AN ACT to amend 1980 PA 300, entitled "An act to provide a retirement system for the public school employees of this state; to create certain funds for this retirement system; to provide for the creation of a retirement board within the department of management and budget; to prescribe the powers and duties of the retirement board; to prescribe the powers and duties of certain state departments, agencies, officials, and employees; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 43c, 85, 104a, and 108 (MCL 38.1343c, 38.1385, 38.1404a, and 38.1408), sections 43c and 104a as amended by 1989 PA 194, section 85 as amended by 1991 PA 47, and section 108 as amended by 1995 PA 177.

The People of the State of Michigan enact:

Sec. 43c. A member who contributes to the member investment plan, or the retirement allowance beneficiary of that member, shall be entitled to all of the following:

(a) A 36-month averaging period for the computation of final average compensation, as provided in section 4.

(b) An annual increase in the retirement allowance. The first increase will occur on the first October 1 that is at least 1 full year after the effective date of the retirement allowance. Subsequent annual increases will occur on October 1 of each subsequent year. The amount of the annual increase shall be equal to 3% of the retirement allowance that would be payable as of the date of the increase without application of this subdivision. However, if the retirement allowance is being paid under section 85(2), the increase shall be based on the retirement allowance that would have been paid under the payment option selected by the member under section 85(1).

(c) The credited service eligibility requirement applicable to the survivor benefits provided in section 89 shall be reduced as follows:

(i) The 15 years of credited service requirement shall be 10 years.

(ii) The 10 years of credited service requirement shall be 5 years.

Sec. 85. (1) A retiring member or retiring deferred member who meets the requirements of section 81 or 81a or a member whom the retirement board finds to be totally and permanently disabled and eligible to receive a retirement allowance under section 86 or 87 shall elect to receive his or her retirement allowance under 1 of the payment options provided in this subsection. The election shall be in writing and filed with the retirement board at least 15 days before the effective date of the retirement allowance except as provided for a disability retirant under section 86 or 87. The

amount of retirement allowance under subdivision (b), (c), or (d) shall be the actuarial equivalent of the amount of retirement allowance under subdivision (a). The options are as follows:

(a) A retirant shall be paid a straight retirement allowance for life computed pursuant to section 84. An additional retirement allowance payment shall not be made upon the retirant's death.

(b) A retirant shall be paid a reduced retirement allowance for life with the provision that upon the retirant's death, payment of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member or deferred member designates in a writing filed with the retirement board at the time of election of this option. A member or deferred member may elect this option and designate a retirement allowance beneficiary under the conditions set forth in section 82(2) or 89(3).

(c) A retirant shall be paid a reduced retirement allowance for life with the provision that upon the retirant's death, payment of 1/2 of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member designated in a writing filed with the retirement board at the time of election of the option.

(d) On and after January 1, 2000, a retirant shall be paid a reduced retirement allowance for life with the provision that upon the retirant's death, payment of 75% of the reduced retirement allowance is continued throughout the lifetime of the retirement allowance beneficiary whom the member designated in a writing filed with the retirement board at the time of election of the option.

(2) In addition to the election under subsection (1), a retirant, other than a disability retirant who is 60 years of age or less, may elect to coordinate his or her retirement allowance with an estimated primary social security benefit. The retirant shall be paid an increased retirement allowance until 62 years of age and a reduced retirement allowance after 62 years of age. The increased retirement allowance paid until 62 years of age shall approximate the sum of the reduced retirement allowance payable after 62 years of age and the retirant's estimated social security primary insurance amount. The estimated social security primary insurance amount shall be determined by the retirement system. The election under this subsection shall be made at the same time and in the same manner as required under subsection (1).

(3) Except as otherwise provided in this section, the election of a payment option in subsections (1) and (2) shall not be changed on or after the effective date of the retirement allowance. Except as provided in subsection (5), the retirement allowance beneficiary selected under subsection (1)(b), (c), or (d) shall not be changed on or after the effective date of the retirement allowance and shall be either a spouse, brother, sister, parent, or child, including an adopted child, of the member, deferred member, retiring member, or retiring deferred member entitled to make the election under this act. Another retirement allowance beneficiary shall not be selected. If a member, deferred member, retiring member, or retiring deferred member is married at the retirement allowance effective date, an election under subsection (1), other than an election under subsection (1)(b), (c), or (d) naming the spouse as retirement allowance beneficiary, shall not be effective unless the election is signed by the spouse, except that this requirement may be waived by the board if the signature of a spouse cannot be obtained because of extenuating circumstances. For purposes of this subsection, "spouse" means the person to whom the member, deferred member, retiring member, or retiring deferred member is married at the retirement allowance effective date. Payment to a retirement allowance beneficiary shall start the first day of the month following the retirant's death.

(4) If the retirement allowance beneficiary selected under subsection (1)(b), (c), or (d) predeceases the retirant, the retirant's benefit shall revert to a straight retirement allowance including post-retirement adjustments, if any, shall be effective the first of the month following the death, and shall be paid during the remainder of the retirant's life. This subsection applies to a retirant whose effective date of retirement is after June 28, 1976, but the straight retirement allowance shall not be payable for any month beginning before the later of the retirement allowance beneficiary's death or October 31, 1980. This subsection also applies to a retirant whose effective date of retirement was on or before June 28, 1976, but the straight retirement allowance shall not be payable for any month beginning before the later of the retirement allowance beneficiary's death or January 1, 1986. A retirant who on January 1, 1986 is receiving a reduced retirement allowance because the retirant designated a retirement allowance beneficiary and the retirement allowance beneficiary predeceased the retirant is eligible to receive the straight retirement allowance beginning January 1, 1986, but the straight retirement allowance shall not be payable for any month beginning before January 1, 1986.

(5) A retirant who returns to service pursuant to section 61 and whose retirement allowance beneficiary selected under subsection (1)(b), (c), or (d) predeceases the member before he or she again becomes a retirant may again choose a retirement allowance beneficiary pursuant to subsection (1)(b), (c), or (d).

(6) If a retirant receiving a reduced retirement allowance under subsection (1)(b), (c), or (d) is divorced from the spouse who had been designated as the retirant's retirement allowance beneficiary under subsection (1)(b), (c), or (d), the election of a reduced retirement allowance payment option shall be considered void by the retirement system if the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, described in section 46 and dated after June 27, 1991 provides that the election of a reduced retirement allowance payment option under subsection (1)(b), (c), or (d) is to be considered void by the retirement system and the retirant provides a certified copy of the judgment of divorce or award or order of the court, or an amended judgment of divorce or award or order of the court, to the retirement system. If the election of a reduced retirement allowance payment

option under subsection (1)(b), (c), or (d) is considered void by the retirement system under this subsection, the retirant's retirement allowance shall revert to a straight retirement allowance, including postretirement adjustments, if any, subject to an award or order of the court as described in section 46. The retirement allowance shall revert to a straight retirement allowance under this subsection effective the first of the month after the date the retirement system receives a certified copy of the judgment of divorce or award or order of the court. This subsection does not supersede a judgment of divorce or award or order of the court in effect on June 27, 1991. This subsection does not require the retirement system to distribute or pay retirement assets on behalf of a retirant in an amount that exceeds the actuarially determined amount that would otherwise become payable if a judgment of divorce had not been rendered.

(7) If the retirement allowance payments terminate before an aggregate amount equal to the retirant's accumulated contributions has been paid, the difference between the retirant's accumulated contributions and the aggregate amount of retirement allowance payments made shall be paid to the person designated in a writing filed with the retirement board on a form provided by the retirement board. If the designated person does not survive the retirant or retirement allowance beneficiary, the difference shall be paid to the deceased recipient's estate or to the legal representative of the deceased recipient.

(8) A retirement allowance payable under a payment option provided in this section is subject to an eligible domestic relations order under the eligible domestic relations order act, 1991 PA 46, MCL 38.1701 to 38.1711.

Sec. 104a. (1) After the end of each state fiscal year, the department shall determine the rate of investment return earned on retirement system assets during the fiscal year, based upon methods established by the retirement board.

(2) At the end of each state fiscal year, the retirement system's actuary shall determine the present value of retirement allowances to be paid after the end of the fiscal year to retirants and retirement allowance beneficiaries in receipt of retirement allowances at the end of the fiscal period. The assumed interest rate used in the determination shall be 8% per year, compounded annually.

(3) The distribution income at the end of each state fiscal year shall be equal to the product of the present value of retirement allowances determined in subsection (2) at the end of the previous fiscal year times the positive excess, if any, of the rate of investment return determined in subsection (1) exceeding 8%. The distribution income calculated pursuant to this subsection at the end of the fiscal years 1984-85 and 1985-86 shall be reduced by the cost of prior postretirement adjustments paid from the appropriated credit for excess interest earnings on retired life assets during the fiscal year pursuant to sections 101, 102, 103, and 104.

(4) After the end of each state fiscal year, each retirant and retirement allowance beneficiary in receipt of a retirement allowance at the end of the fiscal year, and whose effective date of retirement allowance preceded the beginning of that fiscal year, shall be credited with 1 distribution unit for each full year between the effective date of retirement and the end of the fiscal year and 1 distribution unit for each full year of service credit in force on the effective date of retirement. Distribution units shall not accumulate from 1 year to the next year.

(5) The distribution amount for an individual retirant or retirement allowance beneficiary shall be equal to the product of the distribution income determined in subsection (3) times the individual's number of distribution units determined in subsection (4) divided by the total number of distribution units for all eligible retirants and retirement allowance beneficiaries in receipt of retirement allowances at the end of the fiscal year. The distribution amount for an individual retirant or retirement allowance beneficiary of a retirant or member who contributed to the member investment plan is zero.

(6) Each retirement allowance that was effective on or before January 1, 1987 shall be increased effective on the later of January 1, 1986 or the retirement allowance effective date. The amount of the increase shall be 8% of the retirement allowance that would be payable as of the date of the increase without application of this subsection, except that if the retirement allowance is being paid under section 85(2), the increase shall be based on the retirement allowance that would have been paid under the payment option selected by the member under section 85(1).

(7) Until and including October 1, 1989, each retirement allowance that was effective on or before January 1, 1987 shall be increased each October 1 beginning with the later of October 1, 1986 or the first October 1 following the retirement allowance effective date. The amount of the annual increase shall be equal to 40.5% of the increase computed in subsection (6).

(8) After the end of each state fiscal year, the cumulative increase amount shall be computed for each retirant or retirement allowance beneficiary affected by subsections (6), (7), and (11). The cumulative increase amount shall be equal to the difference between the total retirement allowance paid during the state fiscal year and the retirement allowance that would have been payable without application of subsections (6), (7), and (11). The cumulative increase amount for any retirant or retirement allowance beneficiary whose effective date of retirement is after January 1, 1987 is zero.

(9) In March of each year, beginning in March, 1986, each retirant or retirement allowance beneficiary shall be paid, in a single supplemental payment, the excess, if any, of the distribution amount over the cumulative increase amount for the previous state fiscal year. If a retirant dies before receipt of a supplemental payment, the supplemental payment shall be made to the retirant's retirement allowance beneficiary, if any. If both the retirant and the retirement allowance beneficiary die before receipt of a supplemental payment, no payment shall be made.

(10) Each retirement allowance that was effective before October 1, 1981 shall be increased effective January 1, 1990. The amount of the increase shall be a percentage of the retirement allowance that is payable as of January 1, 1990 without application of this subsection, except that if the retirement allowance is being paid under section 85(2), the increase shall be based on the retirement allowance that would have been paid under the payment option selected under section 85(1). The percentage is as follows:

<u>Effective date of retirement</u>	<u>Percentage</u>
October 1, 1980 to September 30, 1981	1%
October 1, 1979 to September 30, 1980	2%
October 1, 1978 to September 30, 1979	3%
October 1, 1977 to September 30, 1978	4%
October 1, 1976 to September 30, 1977	5%
October 1, 1975 to September 30, 1976	6%
October 1, 1974 to September 30, 1975	7%
October 1, 1973 to September 30, 1974	8%
October 1, 1972 to September 30, 1973	9%
October 1, 1971 to September 30, 1972	10%
October 1, 1970 to September 30, 1971	11%
October 1, 1969 to September 30, 1970	12%
October 1, 1968 to September 30, 1969	13%
October 1, 1967 to September 30, 1968	14%
October 1, 1966 to September 30, 1967	15%
October 1, 1965 to September 30, 1966	16%
October 1, 1964 to September 30, 1965	17%
October 1, 1963 to September 30, 1964	18%
October 1, 1962 to September 30, 1963	19%
October 1, 1961 to September 30, 1962	20%
October 1, 1960 to September 30, 1961	21%
Before October 1, 1960	22%

(11) Each retirement allowance that was effective on or before January 1, 1987 shall be increased each October 1 beginning October 1, 1990. The amount of the annual increase shall be equal to 3% of the retirement allowance that would be payable without application of this subsection, except that if the retirement allowance is being paid under section 85(2), the increase shall be based on the retirement allowance that would have been paid under the payment option selected under section 85(1).

Sec. 108. (1) This section is enacted pursuant to federal law that imposes certain administrative requirements and benefit limitations for qualified governmental plans. This state intends that the retirement system be a qualified pension plan created in trust under section 401 of the internal revenue code and that the trust be an exempt organization under section 501 of the internal revenue code. The department shall administer the retirement system to fulfill this intent.

(2) Except as otherwise provided in this section, employer-financed benefits provided by the retirement system under this act shall not exceed \$10,000.00 per year for a retirant who has 15 or more years of credited service at retirement.

(3) Employer-financed benefits provided by the retirement system under this act shall not exceed the limitation under subsection (2) unless application of this subsection results in a higher limitation. The higher limitation of this subsection applies to employer-financed benefits provided by the retirement system and, for purposes of section 415(b) of the internal revenue code, applies to aggregated benefits received from all qualified pension plans administered by the department of management and budget, office of retirement systems. Employer-financed benefits provided by the retirement system shall not exceed the lesser of the following:

(a) One of the following amounts that is applicable to the member:

(i) If a member retires at age 62 or older, \$90,000.00 or the adjusted amount described in subsection (4) per year.

(ii) If a member retires at or after age 55 but before age 62, the actuarially reduced amount of the limitation prescribed in subparagraph (i) per year. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subparagraph. However, the limitation in this subparagraph shall not be actuarially reduced below \$75,000.00.

(iii) If a member retires before age 55, the actuarially reduced amount of the limitation prescribed in subparagraph (ii) per year. The retirement system shall use an interest rate of 5% per year compounded annually to calculate the actuarial reduction in this subparagraph.

(b) 100% of the member's average compensation for high 3 years as described in section 415(b)(3) of the internal revenue code.

(4) Section 415(d) of the internal revenue code requires the secretary of the treasury or his or her delegate to annually adjust the \$10,000.00 limitation described in subsection (2) and the \$90,000.00 limitation described in subsection (3)(a)(i) for increases in cost of living, beginning in 1988. This section shall be administered using the limitations applicable to each calendar year as adjusted by the secretary of the treasury or his or her delegate under section 415(d) of the internal revenue code. The retirement system shall adjust the benefits subject to the limitation each year to conform with the adjusted limitation.

(5) The assets of the retirement system shall be held in trust and invested for the sole purpose of meeting the legitimate obligations of the retirement system and shall not be used for any other purpose. The assets shall not be used for or diverted to a purpose other than for the exclusive benefit of the members, deferred members, retirants, and retirement allowance beneficiaries.

(6) The retirement system shall return post-tax member contributions made by a member and received by the retirement system to a member upon retirement, pursuant to internal revenue service regulations and approved internal revenue service exclusion ratio tables.

(7) The required beginning date for retirement allowances and other distributions shall not be later than April 1 of the calendar year following the calendar year in which the employee attains age 70-1/2 or April 1 of the calendar year following the calendar year in which the employee retires.

(8) If the retirement system is terminated, the interest of the members, deferred members, retirants, and retirement allowance beneficiaries in the retirement system is nonforfeitable to the extent funded as described in section 411(d)(3) of the internal revenue code and the related internal revenue service regulations applicable to governmental plans.

(9) Notwithstanding any other provision of this act to the contrary that would limit a distributee's election under this act, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This subsection applies to distributions made on or after January 1, 1993.

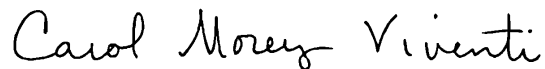
(10) For purposes of determining actuarial equivalent retirement allowances under sections 45 and 85(1)(b), (1)(c), (1)(d), and (2), the actuarially assumed interest rate shall be 8% with utilization of the 1983 group annuity and mortality table.

(11) Notwithstanding any other provision of this section, the retirement system shall be administered in compliance with the provisions of section 415 of the internal revenue code and revenue service regulations under that section that are applicable to governmental plans. If there is a conflict between this section and another section of this or any other act of this state, this section prevails.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4173 of the 89th Legislature is enacted into law.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.